IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

Crl.MC.No. 3623 of 2007()

SC.425/2005 of ASSISTANT SESSIONS COURT, THRISSUR

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PETITIONER: ACCUSED NO.4

BASHEER, S/O RAYAMARAKKAR VEETIL
MUHAMMED, ANCHANGADI, VADANAPPILLY VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.P.RAMACHANDRAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3623 of 2007

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Dated this the 4th day of December, 2007

O R D E R

Against the petitioner a final report was filed alleging commission of the offence punishable, inter alia, under Sections 326 and 307 r/w. 149 I.P.C. Allegations under Sections 3 and 5 of the Explosive Substances Act was also raised. Investigation was completed. Final report was filed. Cognizance was taken by the learned Magistrate. The petitioner was arrayed as the 4th accused. The case was committed to the court of Sessions. It was made over to the Asst. Sessions Judge. The petitioner did not take part in the trial and he started absconding. Trial against the co-accused was taken up. Those accused, who were available and faced trial were found not guilty and acquitted by the learned Asst. Sessions Judge. The petitioner has not entered appearance so far. The case against him has been transferred to the list of long pending cases. Coercive processes have been issued against

the petitioner. He apprehends imminent arrest in execution of such processes.

2. According to the petitioner he is absolutely innocent. His absence was not wilful. He is willing to surrender before the learned Judge and seek regular bail, but he apprehends that his application for bail may not be considered by the learned Judge on merits, in accordance with law and expeditiously. He has therefore come to this court for a direction under section 482 Cr.P.C.

3. The petitioner advances yet another contention. According to the petitioner the victim, in the trial against the co-accused, had stated that he has no grievance now. In the light of such statement of the defacto complainant, the proceedings against the petitioner may be quashed as no useful purpose will be served by unnecessary continuation of the prosecution against the petitioner. The counsel prays that powers under Section 482 Cr.P.C. may be invoked to quash the proceedings against the petitioner.

4. I am afraid the said request cannot be accepted in the light of the decision in **Moosa** v. **S.I. of Police** (2006 (1) KLT 552) (FB).

The said decision is authority for the proposition that hostility of the witnesses, who were examined in the trial, which was held against the co-accused cannot be made a foundation by the absconding accused, who did not face trial to claim any benefit or advantage. The prayer for quashing the proceedings on the ground that the co-accused have been acquitted hence cannot be accepted. It is for the petitioner to appear before the learned Judge and seek regular bail. The petitioner can thereafter advance his contentions before the learned Judge that charges are not liable to be framed against him and that he is entitled to be discharged under Section 227/228 Cr.P.C. If there be any compoundable offence alleged against him and the complainant has compounded such offence, the petitioner can certainly apply for composition of such compoundable offence also. I find absolutely no merit in the prayer to quash the proceedings.

5. It is certainly for the petitioner to appear before the learned Sessions Judge and explain to the learned Judge the circumstances under which he could not earlier appear before the learned Judge. I have no reason to assume that the learned Judge would not consider the

applications for bail to be filed by the petitioner when he surrenders before the learned Judge, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Asst. Sessions Judge and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Judge must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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